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Supreme Court, U.S.
FILED
AUG 17 1987
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM 1987

No.

GODFREY JOSEPH DARBY, JONATHAN LOWERY
and GEORGE ARRENGTON DARBY,
Petitioners,

vs.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA FIFTH DISTRICT COURT OF APPEAL

PETITION

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QUESTIONS PRESENTED

DOES AN ARREST AND SEIZURE OF EVIDENCE, CONDUCTED BY LOCAL LAW ENFORCEMENT OFFICERS ACTING OUTSIDE THEIR TERRITORIAL JURISDICTION, VIOLATE THE PROHIBITION AGAINST UNREASONABLE SEARCH AND SEIZURE OF THE FOURTH AND FOURTEENTH AMENDMENTS TO THE UNITED STATES CONSTITUTION, WHERE THE CRIME DID NOT TAKE PLACE IN THE OFFICER'S LOCALITY AND THE ARREST AND SEIZURE WERE NOT IN "HOT PURSUIT" OR A PRIVATE CITIZEN'S ARREST?

PARTIES BELOW

State of Florida
Godfrey Joseph Darby*
Jonathan Lowery*
George Arrengton Darby*
Timothy A. Leyden

*Petitioners in this Court

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IN THE

Supreme Court of the United States

OCTOBER TERM 1987

No. _____

GODFREY JOSEPH DARBY, JONATHAN LOWERY
and GEORGE ARRENGTON DARBY,
Petitioners,

vs.

STATE OF FLORIDA,
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE FLORIDA FIFTH DISTRICT COURT OF APPEAL

GODFREY JOSEPH DARBY, JONATHAN LOWERY and GEORGE ARRENGTON DARBY petition for a Writ of Certiorari to review the decision of the Florida Fifth District Court of Appeal, which affirmed the Petitioners' convictions for possession and attempt to traffic in marijuana.

OPINION BELOW

The decision of the Florida Fifth District Court of Appeal *sub judice* is officially reported as *Darby v. State of Florida,* 502 So.2d 1358 (Fla. 5th DCA, 1987), *review denied,* _____ So.2d _____ (Fla., 1987). These decisions are reprinted herein as Appendices "A" and "B."

JURISDICTION

On February 26, 1987, a panel decision was filed in the Florida Fifth District Court of Appeal, therein affirming the Petitioners' convictions and sentences (Appendix "A," infra). On March 20, 1987, the Petitioners filed in the Florida Supreme Court a notice to invoke discretionary jurisdiction based upon a conflict of the decision *sub judice* with opinions of other Florida appellate courts. Jurisdictional briefs were thereafter submitted by Petitioners and the State of Florida. On June 19, 1987, the Florida Supreme Court, as the state court of last resort in Florida, denied the Petitioners' Petition for Review and declined to accept jurisdiction (Appendix "B," infra). This Petition for Writ of Certiorari is timely filed within sixty (60) days of the Florida Supreme Court's decision, in accordance with Rule 20.1 of the Rules of the Supreme Court of the United States.

STATUTORY AND CONSTITUTIONAL PROVISIONS INVOLVED

This case involves the Fourth and Fourteenth Amendments to the United States Constitution.

STATEMENT OF THE CASE

In May, 1986, the Petitioners GODFREY DARBY, JONATHAN LOWERY and GEORGE DARBY were charged by the Brevard County State Attorney for the State of Florida in a five-count Amended Information with attempt to traffic in marijuana and possession of marijuana. The Petitioners had filed a motion to dismiss these charges and a motion to suppress evidence on the grounds that local municipal law enforcement officials had conducted an unlawful investigation, arrest and seizure of evidence outside the boundaries of their territorial jurisdiction. Following evidentiary hearings on these motions on May 22, 1986 and July 22, 1986, these motions were denied.

Pursuant to plea negotiations with the State of Florida, the Petitioners tendered pleas of nolo contendere, preserving the right to appeal the denial of their motions to dismiss and suppress based upon the lack of jurisdiction of the police officers. The prosecutor for the State of Florida conceded that these motions would be dispositive of the charges against the Petitioners.

At the evidentiary hearings on the Petitioners' motions to dismiss and suppress, Detective Helen Davidson of the City of Indian Harbour Beach (Florida) Police Department testified that during the first two weeks of November, 1985 she had received several phone calls from a Ralph Skimmiehorn. Skimmiehorn was an inmate at the time at the Brevard County Jail in Titusville, Florida, who had "worked" with Detective Davidson before. According to Detective Davidson, Skimmiehorn had been approached by his cellmate, Petitioner Godfrey Darby, while in the Titusville jail, who was interested in finding a pilot to fly two airplanes for the purpose of trafficking narcotics. At this point in time, Detective Davidson did not instigate or officially open a case against Godfrey Darby.

Soon thereafter, Detective Davidson picked Skimmiehorn up at the jail in Titusville and transported him to his house in Rockledge, Florida. (A map of Brevard County, Florida is annexed as Appendix "E," indicating the locations of the different occurrences in this cause with black circles.) Skimmiehorn is not a resident of the City of Indian Harbour Beach. Godfrey Darby was also shortly released from the Brevard County Jail, and on November 12, 1985, Detective Davidson opened an investigation following a "verification of intelligence." Soon after Skimmiehorn's and Darby's release from jail, Detective Davidson met with them outside of the City of Indian Harbour Beach in an undercover capacity using the name "Nancy," wearing blue jeans, a shirt and a blond wig. Skimmiehorn and Darby inquired about a purchase of five hundred pounds of cannabis. One of these conversations occurred at informant Skimmiehorn's residence in Rockledge. As the undercover operative, Detective

Davidson was to supply and sell canabis to the Petitioners, claiming it to be from out of town. None of these meetings took place within the City of Indian Harbour Beach.

Within a short time period, Detective Davidson and the Petitioners engaged in four "controlled buys" prior to the arrest of the Petitioners. Detective Davidson would take marijuana and present it to the Petitioners. All four transactions occurred either in Rockledge, Melbourne or an unincorporated area of Brevard County outside of the City of Indian Harbour Beach.

The first occurrence was when Detective Davidson and a fellow undercover operative, Officer Scott Brannen, also of the Indian Harbour Police Department, supplied a viewing of marijuana in some shopping center parking lot in Rockledge to the Petitioners. The next transaction was at a Days Inn in Melbourne. At no time during these contacts with the Petitioners, in the course of negotiating the five hundred pound marijuana deal, had Detective Davidson ever represented herself to be a police officer of the Indian Harbour Beach City Police Department. Notwithstanding, there were never any exchanges of marijuana or money in the City of Indian Harbour Beach.[1] Detective Davidson repeatedly stated that none of these activities or transactions ever took place in the City of Indian Harbour Beach, nor were the three Petitioners ever in Indian Harbour Beach at any time while in the contact of the Detective.

Finally, on November 27, 1985 at the Days Inn in Melbourne in a motel room, the Petitioners Godfrey Darby and Lowery were arrested in the presence of Detective Davidson and three other officers from the City of Indian Harbour Beach Police Depart-

---

[1]Detective Davidson was asked if there hade been any discussions between herself and any of the Petitioners that occurred in the City of Indian Harbour Beach, and answered, "Possibly by phone." However, she could "not specifically" recall any actual telephone conversation she had with Godfrey Darby, what was said or when it took place.

ment, i.e. Officers Scott Brannen, McFay and George.[2] These officers were all in civilian clothes during the course of this investigation. At the time of the motel-room arrest, Godfrey Darby and Jonathan Lowery had just handed Detective Davidson $280,000.00 in United States currency and were given a key to a padlock by her to open a rental vehicle containing two hundred thirty pounds of marijuana (supplemented with styrofoam). After Godfrey Darby and Lowery were arrested and these items seized, these Petitioners were transported to the City of Indian Harbour Beach Police Department for booking. Petitioner George Darby, who was not then present, was arrested several months later with an arrest warrant from the Brevard County State Attorney's Office, and served by a deputy of the Brevard County Sheriff's Office.

During her examination at these evidentiary hearings on Petitioners' motions to dismiss and suppress, Detective Davidson repeated that she had never engaged in these transactions as a "private citizen":

> "Q: When you were conducting this investigation, were you conducting this as a duly authorized police officer from Indian Harbour Beach?
>
> A: Yes.
>
> * * *
>
> Q: Let me ask you this, ma'am, did you ever purchase marijuana as a private citizen throughout this investigation?
>
> A: No, sir.
>
> * * *
>
> Q: Throughout all of the time of this investigation, ma'am, you were acting as a law enforcement officer, were you not?
>
> A: Yes, I was.

---

[2]According to Detective Davidson, there were marked units of part-time deputies of the Brevard County Sheriff's Office "waiting a short distance away." However, Detective Davidson stated that the only such county deputy she could identify, Sam Brewer, was not present during the actual arrest. Nor did she actually know where Deputy Brewer was at that time. Notwithstanding, the arrest and booking reports in the State trial court are devoid of any mention of involvement of county law enforcement officers, only City of Indian Harbour Beach officers.

Q: At no time were you to consider yourself as a private citizen, but in fact were operating in your capacity as a law enforcement officer?

A: To the best of my recollection, yes."

The state trial court denied Godfrey Darby's and Lowery's motions to suppress and dismiss, finding that during the foregoing transactions and arrests the officers of the Indian Harbour Beach Police Department were acting as undercover operatives without disclosing their capacity, and were hence "not acting under color of office;" that at the time of the arrest of Petitioners Godfrey Darby and Lowery, the Indian Harbour police officers "were acting with sufficient authority as if they were private citizens and had probable cause to believe and did believe that the persons arrested had committed a felony and that a felony was committed in their presence;" that the pre-arranged transaction which led to Godfrey Darby and Lowery's arrests were substantially based on telephone conversations with Detective Davidson while she was at her office at the Indian Harbour Police Department, within her jurisdiction. (Appendix "C," infra.)

As to George Darby, a different state court judge also denied his motions on the basis of the "private citizen" arrest and seizure exception, as well as the fact that he (George) was subsequently arrested on a warrant issued by the State Attorney's Office. (Appendix "D," infra.)

Petitioners Godfrey Darby, Lowery and George Darby thereafter pursued timely consolidated appeals of their convictions to the Florida Fifth District Court of Appeal in Daytona Beach. The Petitioners argued that the trial court erroneously denied their motions to dismiss and suppress, in that their convictions were the product of unlawful arrests accomplished by the municipal police officers acting outside their territorial jurisdiction. The petitioners further maintained that the seizure of evidence by the municipal officers (i.e. the currency and key to the rental vehicle

containing the cannabis) and testimony thereon, were the unconstitutional "fruits" of the invalid extra-territorial arrests.

On February 26, 1987, the Florida Fifth District Court of Appeal affirmed the Petitioners' convictions, holding:

> "Appellants filed motions to suppress and dismiss the information filed against them on the ground that the arresting officers were acting outside their territorial jurisdiction. Appellants pled nolo contendere, preserving the right to appeal the denial of their motions to dismiss. The validity of an arrest has no bearing on the guilt or innocence of an accused and is not necessary to the jurisdiction of a court in a criminal case. The invalidity of a given arrest, even if establishable, may not suffice to defeat a prosecution where there is sufficient evidence of the offense independent of the arrest. Appellants do not argue that the invalidity of the arrest affects evidence procured by the police after the arrest, but rather the arrest procured by the police in a 'reverse sting' operation which occurred before the arrest. Finding the evidence against the defendants not be to tainted by the arrest, even if invalid, we affirm. *United States v. Crews,* 445 U.S. 463, 100 S. Ct. 1244, 63 L. Ed. 2d 537 (1980); *Perry v. State,* 478 So.2d 494 (Fla. 5th DCA, 1985); *State v. Pinoamador,* 389 So.2d 317 (Fla. 3d DCA, 1980)." [Appendix "A", infra].

On March 20, 1987, the Petitioners filed a Petition for Review to the Florida Supreme Court, asserting that the Fifth District's decision conflicted with other Florida authority invalidating arrests and seizures of evidence conducted by municipal officers acting outside their territorial jurisdiction. On June 19, 1987, the Florida Supreme Court declined to accept jurisdiction and denied the petition for review.

REASONS FOR GRANTING THE WRIT

I. THE PANEL DECISION OF THE STATE COURT HAS DECIDED AN IMPORTANT QUESTION OF FEDERAL CONSTITUTIONAL LAW WHICH SHOULD BE SETTLED BY THIS COURT, IN THAT THE FOURTH AMENDMENT CONSTRAINT AGAINST UNREASONABLE POLICE ACTION BARS ARRESTS AND SEIZURES OF EVIDENCE BY LAW ENFORCEMENT OFFICERS ACTING OUTSIDE THEIR TERRITORIAL JURISDICTION, UNLESS SUSTAINABLE PURSUANT TO THE CITIZEN'S ARREST OR HOT PURSUIT EXCEPTIONS.

In *United States v. Foster,* 566 F. Supp. 1403, 1411-1412 (DCDC, 1983), the U.S. District Court for the District of Columbia articulated the constitutional dimension of an arrest and seizure effected by a municipal law enforcement officer acting outside his jurisdiction:

> "[W]e must also give due regard to the carefully delineated jurisdictional boundaries imposed on local law enforcement personnel by the legislature. [citation omitted.] The concept of reasonableness embodied in the Fourth Amendment logically presupposes an exercise of lawful authority by a police officer. When a law enforcement official acts beyond his or her jurisdiction, the resulting deprivation of liberty is just as unreasonable as an arrest without probable cause. See *United States v. DiRe,* 332 U.S. 581, 595, 68 S. Ct. 222, 228, 92 L. Ed. 210 (1948)."

Finding Foster's arrest and the seizure of a firearm by a metro police officer acting outside the geographical limits of his jurisdiction to be offensive to the Fourth Amendment, the District Court in *Foster* vacated and set aside the conviction.

The validity of an arrest has most often arisen in the context of evidence admissibility, under the "exclusionary" rule prohibiting the admission of evidence obtained as the result of a constitutionally improper arrest under the "Fruit of the Poisonous Tree" doctrine, *Wong Sun v. United States,* 371 U.S. 471, 9 L. Ed. 2d

441, 83 S. Ct. 407 (1963). See *Validity, in State Criminal Trial, of Arrest Without Warranty by Identified Peace Officer Outside of Jurisdiction, When Not in Fresh Pursuit,* 34 A.L.R. 4th 328, 331, note 1. Hence, the argument in this Petition shall be couched in terms of application of the exclusionary rule for violation of the Fourth Amendment stemming from an invalid extra-territorial arrest.

Aside from the conceivable infringement upon constitutional rights caused by extra-territorial arrests and seizures, the practical repurcussions of officers running rampant past city, county and state boundaries is profound and creates havoc to orderly law enforcement. Can a Key West policeman travel to New York to conduct an investigation, arrest and seizure that has little or no link to Key West? Should a constable from Cape Cod be allowed to conduct wire taps in Los Angeles on his own volition? The questions flowing from this scenario are endless, as well as creating a detriment to national law enforcement.

Unfortunately, this Court has never enunciated constitutional or practical guidelines for municipal, county and/or state law enforcement officers in handling investigations, arrests and seizures outside their geographical jurisdictions. Notwithstanding, it has been observed in 34 A.L.R. 4th at 332-333 (1984):

> "As a general rule, a peace officer acting without warrant outside the territorial limits of the jurisdiction under which he holds office is without official powers to apprehend offenders. While it has been frequently held that an officer in such circumstances is to be treated as a private citizen, so that such an arrest would be valid if it was made under circumstances which would authorize a private citizen to make it, there is authority to the effect that a peace officer identified as such to the arrestee cannot act as a mere private citizen in making an arrest."

While there is no national consensus on extra-territorial arrest and seizure guidelines, the Petitioners shall focus their argument in this certiorari proceeding on the representative situation in

Florida. In *United States v. Collins,* 523 F. Supp. 239, 243 (S.D. Fla., 1981), a federal district court in Florida reflected certain observations concerning officers acting outside their jurisdiction . . .

> "Generally, where a law enforcement officer makes an arrest outside of his geographical jurisdiction he is deemed to be acting as a private citizen and a federal court looks to the law of the state in which the arrest occurred to determine if the action can be upheld as a citizen's arrest. [citations omitted.] Florida follows a common law rule recognizing the right of a police officer to make a citizen's arrest (1) where a felony is committed in his presence or (2) when a felony has actually been committed and the police officer as a citizen reasonably believes, in good faith, that the person to be arrested has committed the felony. [citation omitted.] Of course, if this arrest is deemed to have been made outside state boundaries, Florida law would not be controlling. Where, as here, however, there is no specific federal law to govern this situation, the federal court may resort to and apply the common law."

The Florida appellate courts have been less than receptive in recent times to extra-territorial arrests and seizures conducted by local peace officers. Generally, the Florida courts will only affirm the propriety of an arrest and seizure conducted by an officer acting outside of his jurisdiction if and when he proceeds as a "private citizen," not acting under the "color of his office." See *State v. Williams,* 366 So.2d 135, 136 (Fla. 2d DCA, 1979) (suppression order reversed where local police officer acted as "private citizen," not under the color of his office, and did not put himself in a position to gain access to evidence not available to a private citizen); *Phoenix v. State,* 455 So.2d 1024, 1025 (Fla., 1984) (suppression order reversed where local officers acting outside jurisdiction limits did not gain access to evidence not available to a private citizen); *State v. Shipman,* 370 So.2d 1195, 1197 (Fla. 4th DCA, 1979). And as articulated by the Florida appellate court in *Williams,* 366 So.2d at 136, "a police officer cannot justify a seizure made outside his jurisdiction as the action of a private citizen if he is acting under the color of his office and thereby gains access to evidence not available to a private citizen."

The courts of Florida have readily vacated convictions and ordered the suppression of the "fruits" of extra-territorial arrests and seizures. See *State v. Carson,* 374 So.2d 621, 622 (Fla. 4th DCA, 1979)(evidence suppressed from arrest by municipal police officer acting outside of territorial jurisdiction, also a "special deputy" of county sheriff's office, where state had "waived" any claim that arrest proper as citizen's arrest); *State v. Schuyler,* 390 So.2d 458, 460 (Fla. 3d DCA, 1980)(evidence and statements where municipal officer acting outside his territorial jurisdiction conducted improper stop and frisk); *Schachter v. State,* 338 So.2d 269, 270 (Fla. 3d DCA, 1976) (trial court without jurisdiction to try the defendant where arrest made by off-duty police officer invalid as private citizen); *Wilson v. State,* 403 So.2d 982, 984 (Fla. 1st DCA, 1980) (conviction reversed where city police officers acting outside their jurisdiction in investigating suspected drug offenses and obtaining a search warrant; their actions were taken under color of their office and "fruits" of the search were subject to suppression); *State v. Chapman,* 376 So.2d 262, 264 (Fla. 3d DCA, 1979), *cert. den.,* 386 So.2d 642 (Fla., 1980) (suppression affirmed where municipal police officer acted outside of jurisdiction under "color of his office"); *Collins v. State,* 143 So.2d 700 (Fla. 2d DCA, 1962) *cert. den.,* 148 So.2d 280 (Fla., 1962) (conviction reversed stemming from extra-territorial arrest and seizure where municipal police officers acted under color of their office).

The case before this Court is most unusual, in that it involves not the casual observance of unlawful activity. Rather, it concerns a "reverse sting" initiated by a very small municipal police department outside its territory, soliciting parties who have no ties to the municipality to engage in a marijuana purchase outside the municipality. Nothing took place inside the municipality. It was Detective Davidson and her fellow municipal officers who supplied marijuana outside their jurisdiction, and confiscated a large sum of money outside their jurisdiction. There is absolutely no substantive link between any of these transactions and defendants with the City of Indian Harbour Beach, other than it being

the place of employment for Detective Davidson and her fellow municipal officers. The only tenuous link is an inmate/informant also outside the jurisdiction, who apparently had "worked" with them previously on unrelated matters.

Detective Davidson's actions are not sustainable according to the trial court record in this cause under the "private citizen" exception to the general prohibition against extra-territorial investigations, arrests and seizures. Detective Davidson repeatedly swore during her testimony at two different hearings that she consistently conducted this investigation "as a duly authorized police officer from Indian Harbour Beach," and that she had never acted "as a private citizen throughout this investigation." Not only does Detective Davidson's own testimony effectively waive the assertion of the "private citizen" exception under Florida law [*Carson,* 374 So.2d at 622], but the circumstances of these transactions preclude it as well. By no stretch of the imagination can a private citizen in any jurisdiction of the United States of America lawfully take it upon himself to possess and sell large bales of marijuana, and then conduct "citizen's arrests" to those who purchase.

Notwsithstanding, the Florida state courts have readily expressed a concern for the dramatic increase of activity by municipal police officers outside their jurisdiction. See *Wilson,* 403 So.2d at 984; *Shipman,* 370 So.2d at 1197. As stated in *Shipman*:

> "We recognize the legitimate need of police officials to detect, follow and arrest offenders wherever they may go, especially in today's society where elicit drug operations and other organized criminal activities are not conveniently conducted within the confines of a single jurisdiction. However, it would appear that there are numerous official ways whereby police authorities may be deputized or granted extra-territorial police powers when it becomes necessary. It seems rather ludicrous for police officials to have to rely on a citizen's authority to justify an arrest made in culmination of an official police operation."

And in *Wilson,* the Florida court expressed its frustration with the state of the law nationwide on extra-territorial arrests and seizures, in suppressing the "fruits" of one such arrest:

> "Too often the courts are held responsible for turning criminals loose on society when responsibility should properly be placed on law enforcement officials who fail to adhere to reasonably foreseeable limitations on their conduct."

The subject of extra-territorial investigations, arrests and seizures conducted by local law enforcement officers is ripe for consideration by this Court. It is apparent that the Florida courts, as well as some federal courts, have expressed frustration, confusion and constitutional concern for the repercussions of this activity. E. g. *Foster,* 566 F. Supp. at 1412 (when law enforcement official acts beyond his jurisdiction, resulting deprivation of liberty is just as unreasonable as an arrest without probable cause).

It is necessary and timely for this Court to establish constitutional guidelines and standards for local law enforcement authorities. Since it was the Indian Harbour Beach Police Department that did, in fact, create this drug purchase/sale transaction outside of their borders, this factual and legal scenario is deserving of review. The Florida Fifth District Court of Appeal has adversely decided an important question of federal Constitutional law which has not been, but should be, settled by this Court.

CONCLUSION

For all of the foregoing reasons, it is respectfully prayed that the Writ of Certiorari be granted.

Respectfully submitted,

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APPENDIX

APPENDIX A

**IN THE DISTRICT COURT OF APPEAL
OF THE STATE OF FLORIDA
FIFTH DISTRICT
JANUARY TERM 1987**

**NOT FINAL UNTIL THE TIME EXPIRES
TO FILE REHEARING MOTION, AND,
IF FILED, DISPOSED OF.**

CASE NOS. 86-1143, 86-1144, and 86-1794

GODFREY JOSEPH DARBY, JONATHAN LOWERY,
and GEORGE ARRENGTON DARBY,
Appellants,

v.

STATE OF FLORIDA,
Appellee.

Opinion filed February 26, 1987

Appeal from the Circuit Court
for Brevard County,
John Antoon, II, Judge.

Lane W. Vaughn of Vaughn, Vaughn,
Vaughn, Silvernail and Cary,
Melbourne, for Appellants.

Robert A. Butterworth, Attorney General,
Tallahassee, and W. Brian Bayly,
Assistant Attorney General,
Daytona Beach, for Appellee.

PER CURIAM

Appellants filed motions to suppress and dismiss the informations filed against them on the grounds that the arresting officers were acting outside their territorial jurisdiction. Appellants

pled nolo contendere, reserving the right to appeal the denial of their motions to dismiss. The validity of an arrest has no bearing on the guilt or innocence of an accused and is not necessary to the jurisdiction of a court in a criminal case. The invalidity of a given arrest, even if establishable, may not suffice to defeat a prosecution where there is sufficient evidence of the offense independent of the arrest. Appellants do not argue that the invalidity of the arrest affects evidence procured by the police after the arrest, but rather the evidence procured by the police in a "reverse sting" operation which occurred before the arrest. Finding the evidence against the defendants not to be tainted by the arrest, even if invalid, we affirm. *United State v. Crews,* 445 U.S. 463, 100 S.Ct. 1244, 63 L.Ed.2d 537 (1980); *Perry v. State,* 478 So.2d 494 (Fla. 5th DCA 1985); *State v. Pinoamador,* 389 So.2d 317 (Fla. 3d DCA 1980).

AFFIRMED.

DAUKSCH, SHARP, W., and COWART, JJ., concur.

APPENDIX B

Supreme Court of Florida

FRIDAY, JUNE 19, 1987

CASE NO. 70,264

District Court of Appeal,
Fifth District No. 86-1143
86-1144
86-1794

GODFREY JOSEPH DARBY, JONATHAN LOWRY, and GEORGE ARRENGTON DARBY,

Petitioners,

v.

STATE OF FLORIDA,

Respondent.

This cause having heretofore been submitted to the Court on jurisdictional briefs and portions of the record deemed necessary to reflect jurisdiction under Article V, Section 3(b), Florida Constitution (1980), and the Court having determined that it should decline to accept jurisdiction, it is ordered that the Petition for Review is denied.

No Motion for Rehearing will be entertained by the Court. See Fla. R. App. P. 9.330(d).

MCDONALD, C.J., OVERTON, EHRLICH, GRIMES and KOGAN, JJ., concur

A True Copy

TEST:

Sid J. White
Clerk Supreme Court
(Seal)

By: Betsy Hill
Deputy Clerk

H
cc: Hon. Frank J. Habershaw, Clerk
Hon. Raymond C. Winstead, Jr., Clerk
Hon. John Antoon, II, Judge

Lane W. Vaughn, Esquire
W. Brian Bayly, Esquire

RECEIVED 6/22/87

APPENDIX C

**IN THE CIRCUIT COURT OF
THE EIGHTEENTH JUDICIAL IN
AND FOR BREVARD COUNTY, FLORIDA**

CASE NO. 85-5283-CF/A/B/C

STATE OF FLORIDA,

Plaintiff,

vs.

JONATHON LOWRY, TIMOTHY LYDEN,
GODFREY DARBY,

Defendants.

FILED
JUN 27 3:41 PM '86
R.C. WINSTEAD, JR.
CLERK CIR. CT.
BREVARD CO. FLA.
BY /s/ RM DC

ORDER

THIS CAUSE coming on to be heard on the Motion to Dismiss dated May 8, 1986 and the Motion to Suppress dated May 14, 1986 filed by the Defendants and the Court having received testimony and heard the arguments of counsel and having been fully advised in the premises the Court hereby makes the following findings of fact and conclusion of law:

With respect to Ground I of the Motion to Dismiss, this portion of the Motion to Dismiss was waived and abandoned and not considered by this Court at the request and instance of the Defendants;

With respect to Count II of the Motion to Dismiss, during the investigation and the transaction which led to the Defendants arrest the officers of the Indian Harbor Beach Police Department were acting as under cover operatives without disclosing to the Defendants that the officers were law enforcement agents and the officers were not acting under color of office;

With respect to Count II of the Motion to Dismiss, at the time of the arrest of the Defendants, the officers of the Indian

Harbor Beach Police Department effecting the arrest were acting with sufficient authority as if they were private citizens and had probable cause to believe and did believe that the persons arrested had committed a felony and that the felony was committed in their presence.

With respect to Ground II of the Motion to Dismiss, the prearranged transaction which led to the Defendants' arrest was substantially based on telephone conversations with Detective Diane Davidson of the Indian Harbor Beach Police Department while she was located within her jurisdiction in the city of Indian Harbor Beach;

The Court hereby ORDERS and ADJUDGES that based upon the foregoing findings and each of them the Defendants' Motion to Dismiss is therefore, denied.

The Court makes and adopts the foregoing findings of facts and conclusions of law with respect to the Motion to Suppress and therefore the Motion to Suppress is denied.

DONE AND ORDERED in chambers, Titusville, Brevard County, Florida this 23rd day of June, 1986.

/s/ John Antoon, II
Honorable John Antoon, II
Judge of the Circuit Court

Copies furnished to:

David E. Silverman, A.S.A.
Lane Vaughn, Attorney for the Defendant

APPENDIX D

IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT, BREVARD COUNTY, FLORIDA

CRIMINAL DIVISION

CASE NO. 86-296-CF-A

STATE OF FLORIDA,

Plaintiff,

vs.

GEORGE ARRENGTON DARBY,

Defendant.

FILED
JUL 29 4:04 PM '86
R.C. WINSTEAD, JR.
CLERK CIR. CT.
BREVARD CO. FLA.
BY /s/ RM DC

ORDER

This cause having come on for hearing on defendant's Motion to Suppress, and the Court, having heard testimony, finds the following facts:

1. Ralph Skimmiehorn, while incarcerated in the Brevard County Jail in Titusville, called Agent Davidson of the Indian Harbour Beach Police Department and advised her that he had been approached to participate in drug transactions.

2. Agent Davidson was contacted by Skimmiehorn because Skimmiehorn had previously worked with Agent Davidson as a confidential informant.

3. Officers of the Indian Harbour Beach Police Department acting in an undercover capacity entered into various drug transactions with defendant and three co-defendants. (The co-defendants were tried separately.)

4. Although the case file was established in Indian Harbour Beach and Agent Davidson received various calls to her office

there in relation to this transaction, all of the contacts relating to the specific purchases and sales of cocaine took place outside the city of Indian Harbour Beach.

5. Although the co-defendants were arrested by officers of Indian Harbour Beach acting as "private citizens" while accompanied by an agent of the Brevard County Sheriff's Department, this defendant was arrested on a capias issued by the Brevard County State Attorney's Office based on information supplied by the Indian Harbour Police Department undercover agents.

Defendant challenges the arrest and moves to suppress the evidence because the Indian Harbour Beach Police Officers were acting outside their jurisdiction and, if acting as "private citizens", they too broke the law in dealing in controled substances and the evidence should not be permitted.

The Court has reviewed the cases submitted by Defendant and the State and finds that this matter is controlled by the decisions in *State v. Shipman,* 370 So. 2d 1195 (Fla. 3d DCA 1979), *State v. Pinoamador,* 389 So. 2d 317 (Fla. 3d DCA 1980), and *Phoenix v. State,* 455 So. 2d 1024 (Fla. 1984).

Based on the holdings of said cases, the Motion to Suppress, be and the same is hereby denied.

DATED this 28th day of July, 1986.

/s/ Charles M. Harris
CHARLES M. HARRIS
CIRCUIT JUDGE

Copies to:

State Attorney - Theresa Clark
Defense Attorney - Lane Vaughn
P. O. Box 370
Melbourne, Florida 32901

BEST AVAILABLE COPY

APPENDIX E

Map of Brevard County, Florida

